IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 17779 of 2005

Date of Decision: October 24, 2006

Dr. Shekhar Kumar Shakya

…..Petitioner

Vs.

Union of India and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. B.R. Mahajan, Advocate
for the petitioner.

Ms. Renu Bala Sharma, C.G.S.C,
for the respondents.

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M.M. KUMAR, J. (ORAL)

The short prayer made by the petitioner in this petition is for issuance of a direction to the respondents to allow the petitioner to continue wearing badges in accordance with the instructions dated November 27, 1998 (P-4) issued by the Ministry of Home Affairs. It has also been prayed that the impugned order dated September 23, 2005 (P-5) declining his request to wear Ashoka Emblem with one star be quashed.

Brief facts of the case are that the petitioner has joined as Medical Officer in the Rank of Assistant Commandant in the Border Security Force on May 31, 1994. He was promoted as Senior Medical Officer on May 31, 2003. It is the case of the petitioner that the Ministry of Home Affairs, Government of India, respondent No.1 issued a circular dated November 27, 1998 which entitle an officer to wear Ashoka Emblem and one star after completion of 11 years of service as Medical Officer till completion of 16 years. After completion of 16 years, he becomes entitled to wear Ashoka Emblem with two stars with Gorget Patches. The aforementioned requirement was clarified on September 22, 1999 by observing that Medical Officers were to get their time scale as is admissible to them, and they were to wear the rank badges similar to general duty cadre officer of the same seniority subject to the condition that they will start wearing rank badges when at least one officer of the General Duty Cadre of the same year of recruitment is promoted to that rank. The aforementioned order was challenged by various officers and one such example of Dr. Ram Krishan Pathak has been cited who had challenged the aforementioned order before the Gauhati High Court by filing Writ Petition (Civil) No. 519 of 2000 (Agartala Bench). A copy of the order passed by the learned Single Judge in case of Dr. Ram Krishan Pathak has been placed on record as annexure P-6, which is dated February 24, 2005. A perusal of the aforementioned judgment shows that the claim made by Dr. Pathak was accepted.

The case of the petitioner is that he is also batch-mate of Dr. Pathak, as is evident from the perusal of promotion order dated February 2, 1999 (annexure P-2), wherein the name of Ram Krishan Pathak figures at Sr. No.13 and the name of the petitioner figures at Sr. No.29. It has also been pointed out that both the petitioner as well as Dr. Pathak were appointed in the year 1994. Another order showing that both the officers have been promoted on the post of Chief Medical officer, has also been placed on record as annexure P-3 which is dated July 23, 2004. The name of Dr. Pathak figures at Sr. No. 12 and that of the petitioner at No.25.

The case of the respondents, as projected in the written statement is that the clarified letter- instructions dated September 23, 2005 (P-5) issued by the Ministry of Home Affairs does not entitle the petitioner to wear Ashoka Emblem with one star or two stars on the completion of 11 years and 16 years of service respectively. According to the learned counsel for the Central Government, the petitioner would become entitled to wear Ashoka Emblem with one start or two stars, depending on when the batch-mate of general duty cadre officer wear that Emblem and stars, therefore, the petitioner is not entitled to the relief claimed in the petition.

Having heard the learned counsel, we are of the view that the matter is squarely covered by the judgment of the Gauhati High Court wherein a colleague of the petitioner has made the same prayer which was accepted. It is appropriate to mention that we have adjourned the hearing of this case on September 12, 2006 in order to ascertain as to whether the aforementioned judgment still holds the field or there is some modification

at the stage of appeal or the SLP. Learned Central Government counsel has stated that an application for clarification has been filed before the Gauhati High Court and the result is awaited. Be that as it may, the judgment annexure P-6 passed by the Gauhati High Court in the case of a colleague of the petitioner still holds the field and accordingly, we followed the same view. This is admitted position that the petitioner was promoted to the post of Senior Medical Officer on May 31, 1998, and the instructions dated November 27, 1998 annexure P-4 have been given effect to from the aforementioned date. The clarificatory instructions dated September 23, 2005 would not apply to the facts of the present case because the petitioner has acquired a right on completion of 11 years of service on May 31, 2005 which is earlier to the date of clarificatory instructions issued on September 23, 2005 (P-5). There is no indication that clarificatory instructions dated September 23, 2005 are retrospective in nature. It is well settled that instructions which is a piece of subordinate legislation cannot be issued with retrospective effect. In that regard, reliance may be placed on a judgment of the Hon'ble Supreme Court in the case of **N.C. Singhal v. Director General, Armed Forces Medical Service, New Delhi and another**, AIR 1972 SC 628. Their lordships in paras 6 and 7 of the aforementioned judgment have observed as under:-

> "6. The appellant submitted that his conditions of service were governed by the Army Instructions No. I/S of 1954 and according to para 13 thereof, the whole of his previous full pay commissioned service must count

> for pay, and that Army Instruction No.176 which came into force with retrospective effect from October 26, 1962, in the case of A.M.C. Reserve Officers called to colour service during emergency in the matter of 'ante-date', for promotion, T.A. leave and pay, cannot affect his conditions of service which were governed in this behalf by para 13 of Army Instruction No. I/S of 1954.
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> 7. We think that the appellant's conditions of service were governed by para 13 of Army Instruction No. I/S of 1954 and his previous full pay commissioned service should be taken in the matter of 'ante-date' for the purpose of his pay. <u>The condition of service in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative (Army?) instruction which was given retrospective effect from 26th October, 1962</u>." (emphasis added)

The view taken by the learned Single Judge of the Gauhati High Court deserves to be upheld on this additional ground as well. Accordingly, the petitioner became entitled to wear the badge of Ashoka Emblem with one star on May 31, 2005 when he completed 11 years of service. He would also become entitled to wear the badge of Ashoka Emblem with two stars with Gorget patches on completion of 16 years of service which he is to complete on May 31, 2010.

In view of the above, the writ petition is allowed and the petitioner is held entitled to wear Ashoka Emblem with one star as he has completed 11 years service on May 31, 2005.

(M.M.KUMAR)
JUDGE

October 24, 2006
sanjay

(M.M.S.BEDI)
JUDGE